

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM JEFFREY GILLIAM,

No C 02-3382 VRW

Plaintiff,

ORDER

v

SONOMA COUNTY, CITY OF SANTA
ROSA, CALIFORNIA, BOB SMITH,
TIMOTHY WERNER, J PEDERSON,
MIKELL BRYAN, JOAN COOPER and
GENERAL DYNAMICS CORPORATION,

Defendants.

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Pursuant to its November 17, 2003, order and in
accordance with the analysis below, the court GRANTS defendant
General Dynamics' (GD) motion for attorney fees and costs (Doc #
49) and awards GD its reasonable attorney fees in the amount of
\$31,771.25 and its costs in the amount of \$2,782.69.

I

On July 15, 2002, plaintiff William Gilliam (Gilliam)

1 filed his original complaint in this action. Doc # 1. The
2 first three causes of action, which stated claims under 42 USC
3 §§ 1983 and 1985, formed the sole basis for federal
4 jurisdiction. On September 30, 2002, defendant GD filed a
5 motion to dismiss the claims Gilliam asserted against it. Doc #
6 9. Defendant Sonoma County (County) also filed a motion to
7 dismiss on November 8, 2002. Doc # 19. The court granted GD
8 and County's motions to dismiss on May 27, 2003. Doc # 31. The
9 court found that a one-year statute of limitations applied to
10 Gilliam's federal causes of action. May 2003 Ord 6:20-7:14.
11 The incidents giving rise to Gilliam's claims were his June 13,
12 2001, arrest and the concomitant issuance of an emergency
13 protective order. Id at 8:8-18. As of June 28, 2001, no
14 criminal charges remained pending against Gilliam, and thus the
15 latest date upon which the statute of limitations could have
16 begun to run was June 28, 2001. Id at 9:15-10:10.
17 Additionally, Gilliam could not avail himself of the doctrine of
18 continuing acts in asserting that the statute of limitations had
19 begun to run at a later date. Id at 10:11-11:15. This meant
20 Gilliam's July 15, 2002, complaint was filed outside the
21 statutory time period. Based on these findings, the court
22 dismissed Gilliam's complaint on the basis that it was time-
23 barred. Id at 12:5-7. The court declined to exercise
24 supplemental jurisdiction over Gilliam's state law claims. Id
25 at 12:9-24.

26 Gilliam filed an amended complaint on July 3, 2003.
27 Doc # 33. The complaint asserted only federal causes of action
28 and contained essentially the same allegations as did his

1 original complaint. County filed a motion to dismiss on August
2 4, 2003. Doc # 35. GD filed a motion to dismiss on August 8,
3 2003, and also requested attorney fees under 42 USC § 1988(b),
4 which permits such an award for a prevailing defendant in a
5 civil rights cases when the plaintiff's claims are unreasonable
6 and vexatious. Doc # 39. When Gilliam failed to respond in a
7 timely fashion to those two motions, the court issued on
8 September 11, 2003, an order to show cause why the motions
9 should not be treated as unopposed. Doc # 42. Gilliam
10 responded on September 19, 2003, by filing an opposition
11 memorandum. Doc # 45.

12 On November 17, 2003, the court granted County and GD's
13 motions to dismiss, finding that Gilliam's amended complaint did
14 little to rectify the insufficiencies of his original complaint.
15 Doc # 48. The court once again found that Gilliam's causes of
16 action were time-barred, see 11/17/03 Ord (Doc # 48) 21:6-17,
17 and that Gilliam could not save his claims by resorting to the
18 doctrine of continuing acts, see id at 27:1-8.

19 The court further found that the claims asserted by
20 Gilliam in his amended complaint were meritless within the
21 meaning of § 1988(b) and thus awarded GD its requested attorney
22 fees. Id at 32:26-33:1. The court, however, reserved judgment
23 on the proper amount of such fees. To inform its decision, the
24 court required that GD submit its bill of costs and additional
25 information regarding the reasonability of the hourly rate and
26 number of hours for which it sought compensation. See id at
27 37:24-38:7. The court ordered GD to file such documentation by
28 December 8, 2003, and ordered Gilliam to file any objections by

1 December 22, 2003. Id at 38:7-11.

2 On December 8, 2003, GD filed a memorandum in support
3 of its motion for attorney fees, as well as supporting
4 documentation. Docs ## 49, 50. Gilliam failed to file any
5 objections to the bill by December 22, 2003.

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7 II

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9 The court determined in its previous order that a
10 prevailing defendant in a civil rights action brought under §
11 1983 or § 1985 is eligible for an award of reasonable attorney
12 fees and costs if the civil rights action is groundless or
13 without foundation. See 11/17/03 Ord 29:16-19. The court
14 determined that Gilliam's claims stated in the amended complaint
15 were groundless and frivolous and thus awarded GD its reasonable
16 fees and costs incurred in moving to dismiss that complaint, as
17 well as those incurred in moving the court to award fees and
18 costs. Id at 33:16-21. GD seeks a combined award of \$31,771.25
19 as reasonable attorney fees for its dismissal and attorney fee
20 motions. See GD Fee Award Memo 4 at ¶ 9. This represents 3.25
21 hours of attorney time at an hourly rate of \$325.00, 50.5 hours
22 of attorney time at an hourly rate of \$250.00 and 100.5 hours of
23 attorney time at an hourly rate of \$180.00. Id at 11 ¶ 22. GD
24 also seeks costs incurred in the amount of \$2,782.69. Id at 11-
25 12 ¶ 24.

26 To determine a reasonable attorney fee award, courts
27 commonly employ the lodestar method. The lodestar method
28 requires the court to calculate an award of reasonable attorney

1 fees by "multiplying the number of hours the prevailing party
2 reasonably expended on the litigation by a reasonable hourly
3 rate." Morales v City of San Rafael, 96 F3d 359, 363 (9th Cir
4 1996). Generally, "the prevailing market rate in the community
5 is indicative of a reasonable hourly rate. Jordan v Multnomah
6 County, 815 F2d 1258, 1262 (9th Cir 1987). So the court looks
7 to whether the requested fee award is in line with rates
8 "prevailing in the community for similar services of lawyers of
9 reasonably comparable skill and reputation." Id at 1262-63
10 (citing Blum v Stenson, 465 US 886 (1984); internal citations
11 omitted; emphasis supplied).

12 GD initially provided the court with no information
13 concerning the amount of fees and costs it sought. Therefore,
14 in its November 17, 2003, order, the court instructed GD to file
15 its bill of costs and directed GD's attention to the following
16 analysis recently conducted by the court in connection with
17 another civil action involving an award of attorney fees.

18 Recent Census data, drawn from the Statistical Abstract
19 of the United States: 2001, indicated that gross receipts for
20 law partnerships nationwide totaled \$66 billion in 2001. See US
21 Census Bureau, Statistical Abstract of the United States: 2001,
22 (121st ed) (Stat Abs), tbl 712. Net receipts for those
23 partnerships totaled \$26 billion. Id. The ratio of net to
24 gross receipts was 39.39%. The ratio of net to gross receipts
25 for proprietorships was higher, 48.15%, but the court focuses
26 here on the ratio for partnerships, a figure more favorable to
27 GD.

28 Relying on Census data for the San Francisco,

1 California primary metropolitan statistical area, the BLS has
2 calculated employment and wage estimates for a wide range of
3 employment categories, including lawyers, for the year 2001.
4 See United States Department of Labor, Bureau of Labor
5 Statistics, "San Francisco, CA PMSA - 2001 OES Metropolitan Area
6 Occupational Employment and Wage Estimates," available at
7 http://www.bls.gov/oes/2001/oes_7360.htm. For lawyers employed
8 in the San Francisco metropolitan area, the BLS estimated the
9 median hourly wage at \$57.33 and the mean hourly wage at \$54.01.
10 See id, "Legal Occupations." Employing the higher median
11 figure, \$57.33, and dividing that amount by 39.39% - the ratio
12 of net to gross income for law partnerships derived from the
13 national census data - yielded a figure of \$145.54 as a rough
14 average billing rate for the entire spectrum of San Francisco
15 area lawyers, including attorneys working in private firms of
16 all sizes, in-house counsel, solo practitioners, attorneys
17 employed by nonprofit organizations and attorneys employed by
18 the local, state and federal government. This average appeared
19 accurately to reflect the going rate in the San Francisco legal
20 community for legal services across a broad range of practice
21 areas. In sum, the BLS and Census data reflected an approximate
22 "customary fee" of \$150 per hour for lawyers in the Bay area.
23 This approximation, while imperfect, was drawn from objective
24 data compiled by disinterested governmental agencies and served
25 as a useful baseline for the calculation of reasonable attorney
26 fees.

27 The court also noted that a lawyer's appraisal of the
28 value of his own work is, at best, an imperfect measure of its

1 "reasonable" value. With respect to posted fees, nothing is
2 said about discounts given clients, write-offs of time,
3 collection experience or the host of other matters that
4 determine the attorney fees that actually prevail.

5 In light of these considerations, the court ordered GD
6 to file documentation providing verifiable data on the basis of
7 which the court could determine a reasonable amount of attorney
8 fees (i e, a reasonably hourly rate as set by the market, not
9 simply posted by an attorney, and a reasonable number of hours)
10 to award GD on the basis of the fact that Gilliam's amended
11 complaint stated meritless claims.

12 GD filed its request for attorney fees and costs, along
13 with supporting documentation, on December 8, 2003. GD provided
14 the court with substantial information on which to base an
15 assessment of reasonable fees. GD asserts that its attorneys
16 spent a total of 154.25 hours working to dismiss Gilliam's
17 amended complaint and that the total amount charged was
18 \$44,759.74. GD Fee Award Memo at 4 ¶ 8; Decl Christopher D
19 Liguori (Liguori Decl; Doc # 50) at 2 ¶ 3. GD, however, submits
20 a claim for \$31,771.25, representing almost a 30% decrease from
21 the fees actually charged. GD Fee Award Memo at 4 ¶ 9; Liguori
22 Decl at 2 ¶ 5. Additionally, GD does not include in its request
23 "sums expended in preparing and submitting its [supplemental]
24 Petition for Attorneys' Fees and Expenses." GD Fee Award Memo
25 at 4 ¶ 9; Liguori Decl at 2-3 ¶ 5. GD justifies its claim to
26 the \$31,771.25 figure in several ways.

27 First, GD contends that, because this matter was
28 pending in 2003, the "most up-to-date fee data is appropriate to

1 apply in this case." GD Fee Award Memo at 6 ¶ 14. GD then
2 provides the court with updated BLS data regarding employment
3 and wage statistics for the year 2002. See Liguori Decl at 4 ¶
4 9, Exh C. For attorneys in the San Francisco metropolitan area,
5 the mean hourly wage was \$70.23 and the median hourly wage was \$
6 64.88. Id, Exh C at 11 ("Legal Occupations"). GD thus employs
7 the same analysis as the court did previously with the 2001
8 statistics. GD calculates that \$70.23 divided by the 39.39%
9 figure, which represented the ratio of net to gross income for
10 law partnerships derived from the 2001 national census data,
11 yields a rough average rate of \$178.29. Accordingly, GD
12 contends, \$180 per hour reflects an appropriate customary fee.
13 See GD Fee Award Memo at 6 ¶ 14.

14 The court agrees with GD that the most up-to-date
15 information is appropriate to use in calculating the attorney
16 fees in this case. The increase in mean hourly wage for 2002 is
17 significant in terms of determining an accurate customary fee.
18 Although GD provides the court with updated information
19 regarding BLS employment statistics, GD does not provide the
20 court with updated information on the ratio of net to gross
21 income for law partnerships. Thus, the court conducted its own
22 research on the matter and learned that the Statistical Abstract
23 of the United States: 2002 is now available online at
24 <http://www.census.gov/prod/www/statistical-abstract-02.html>.
25 According to the new figures, gross receipts for law
26 partnerships totaled \$72 billion, while net receipts totaled \$27
27 billion. See id, tbl 701. This yields a ratio of net to gross
28 receipts of 37.5%. Dividing the \$70.23 figure by 37.5% yields a

1 rough estimated hourly wage of \$187.28. Thus, the court
2 considers that an approximate customary wage of \$190 is the most
3 current and accurate figure - which, of course, is a figure even
4 more favorable to GD than the figure it calculates in its
5 papers.

6 Second, GD contends that attorneys with "significantly
7 higher than average experience merit fee awards closer to the
8 top of the customary range, at or around \$350 per hour." See GD
9 Fee Award Memo at 7 ¶ 16. GD cites to several recent district
10 court cases, some from the Northern District of California, in
11 which judges awarded attorney fees for experienced counsel at an
12 hourly rate from \$300 to \$400. See id (citing district court
13 cases from the Northern and Central Districts of California, the
14 Southern District of New York and the Southern District of
15 Texas). Such an elevated fee, GD contends, would be appropriate
16 for a senior partner with upwards of 20 years of civil
17 litigation experience. See id. GD then cites to several
18 district court cases that awarded fees of \$250 per hour for
19 attorneys with slightly less experience, such as junior partners
20 or senior associates with 7 to 20 years of experience. See id
21 (citing district court cases from the Southern District of New
22 York).

23 GD then describes the relative experience of each
24 attorney who worked on the case. Richard Franch, a senior
25 partner at the Chicago law firm Jenner & Block, has over 30
26 years of civil litigation experience. Franch graduated from the
27 University of Chicago Law School in 1967. Franch is a member of
28 the American College of Trial Lawyers and the American Law

1 Institute and is admitted to the bars of the United States
2 Supreme Court, the United States Tax Court and the Second,
3 Third, Fourth, Sixth, Seventh, Eighth and Ninth Circuits.
4 Franch's hourly billing rate is \$510. GD Fee Award Memo at 8 ¶
5 17.A; Liguori Decl at 3 ¶ 6. William Goodman, a senior partner
6 at the San Francisco firm Topel & Goodman, has 29 years of
7 experience in civil litigation. Goodman graduated from Boalt
8 Hall School of Law at the University of California, Berkeley, in
9 1974. Goodman has been listed for ten years in the publication
10 "The Best Lawyers in America." Goodman's hourly billing rate is
11 \$425. GD Fee Award Memo at 9 ¶ 17.B; Liguori Decl at 4 ¶ 7.
12 Based on Franch and Goodman's level of experience, GD requests
13 that the services of these two attorneys be assessed at an
14 hourly rate of \$325.

15 Christopher Liguori is a partner at Jenner & Block with
16 16 years of civil litigation experience. Liguori graduated
17 magna cum laude from the American University law school in 1987
18 and is admitted to the bars of the United States Court of
19 Federal Claims and of the Fourth, Seventh and Ninth Circuits.
20 Liguori's hourly billing rate is \$425. GD Fee Award Memo at 8 ¶
21 17.A; Liguori Decl at 3 ¶ 6. GD requests that Liguori's
22 services be assessed at an hourly rate of \$250. GD Fee Award
23 Memo at 9 ¶ 18.

24 Jennifer Hasch is an associate at Jenner & Block with
25 three years of civil litigation experience. Hasch received her
26 law degree from Boalt Hall at the University of California,
27 Berkeley, in 2000. Hasch's hourly billing rate is \$240. GD Fee
28 Award Memo at 8-9 ¶ 17.A. Jeremy Blank is a senior associate

1 at Topel & Goodman with 9 years of experience litigating civil
2 and criminal matters. Blank graduated from Golden Gate
3 University law school with highest honors in 1994. Blank's
4 hourly billing rate is \$325. GD Fee Award Memo at 9 ¶ 17.B;
5 Liguori Decl at 4 ¶ 7. GD requests that the services of these
6 two attorneys be assessed at an hourly rate of \$180, ten dollars
7 below the average figure calculated by the court above. See GD
8 Fee Award Memo at 11 ¶ 22.

9 Third, GD submits information about its hourly rates
10 based upon its billing statements. Liguori Decl at 2 ¶ 3, Exhs
11 A & B. GD asserts that Jenner & Block gave GD a 10% discount
12 off the normal hourly billing rates due to the volume of
13 business GD gives to that firm. Id at 2 ¶ 4. Further, as noted
14 above, GD's requested billing rates are substantially lower
15 (roughly 30% lower) than the rates it was actually charged. See
16 id at 2 ¶ 3, Exhs A & B.

17 In light of this information, the court considers the
18 hourly rates claimed by GD to be reasonable for the purposes of
19 the lodestar calculation. First, as noted above, the updated US
20 Census and BLS information shows that a higher customary billing
21 rate is now warranted and that the appropriate baseline figure
22 to use is now \$190, rather than \$150. Second, although the
23 court has noted that a lawyer's own assessment of the value of
24 his work is not particularly accurate, GD has demonstrated that
25 Franch and Goodman are highly experienced and that Liguori is
26 also above average in terms of experience. Thus, higher fees
27 for these attorneys are justified. Further, GD reasonably
28 requests that the two associates who worked on the case,

1 although no doubt highly capable, only be assessed at a rate
2 slightly below average. Third, GD requests average or
3 moderately above average fees for the majority of the hours
4 claimed; the higher billing rates requested for Franch and
5 Goodman apply only to a handful of requested hours. See GD Fee
6 Award Memo at 11 ¶ 22. Fourth, the requested fees not only
7 reflect the 10% discount given to GD by Jenner & Block, but also
8 represent a substantial reduction from the fees actually charged
9 to GD by the five attorneys. Altogether, then, the court finds
10 that the fees requested reflect reasonable hourly rates, in
11 light of counsels' experience and factors such as write-offs and
12 client discounts.

13 The court also considers the number of hours requested
14 by GD to be reasonable. GD only requests compensation for hours
15 spent working to dismiss Gilliam's amended complaint and not for
16 hours spent working on the fee award request. See Liguori Decl
17 at 2-3 ¶ 5. As GD notes, its attorneys were required to wade
18 through Gilliam's convoluted 24-page amended complaint to
19 ascertain whether that complaint cured the deficiencies on which
20 the court dismissed the original complaint. GD's attorneys also
21 were required to obtain documents relating to the Sonoma County
22 criminal proceedings against Gilliam. GD Fee Award Memo at 10-11
23 ¶ 21. GD attaches its billing sheets to prove the number of
24 hours spent working on the matter. See Liguori Decl at ¶ 3,
25 Exhs A & B. In addition, GD carefully breaks down the requested
26 hours according to the attorney who worked on them. Id; see
27 also GD Fee Award Memo at 11 ¶ 22. The court finds this request
28 to be reasonable.

1 Under § 1988(b), GD may also recover its full costs
2 expended in its effort to dismiss Gilliam's amended complaint.
3 GD requests reimbursement for costs that were incurred incident
4 to the attorneys' provision of services and that are "normally
5 charged to fee-paying clients." GD Fee Award Memo at 11-12 ¶
6 24. GD requests reimbursement of \$194.20 for copying costs,
7 \$1,258.42 for Lexis and Westlaw fees, \$10.01 for long-distance
8 telephone charges, \$28.54 for delivery services, \$.77 for Pacer
9 services, \$5.00 for parking fees and \$1,285.75 for paralegal
10 fees. Id; Liguori Decl at 6 ¶ 13. Total claimed expenses are
11 \$2,782.69. Id. The court finds that the Liguori declaration
12 sufficiently establishes that GD incurred such expenses and thus
13 finds this request to be reasonable as well.

14 Accordingly, the court finds that an award of
15 \$31,771.25 in attorney fees is reasonable, as defined by the
16 lodestar method and the court's previous order. An award for
17 the requested \$2,782.69 in costs is also warranted.

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19 III

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21 In sum, the court finds that GD's requested hourly
22 billing rate and requested number of hours are both reasonable
23 for purposes of the lodestar calculation. Thus, the court
24 awards GD its reasonable attorney fees in the amount of
25 \$31,771.25 and its costs in the amount of \$2,782.69. The court

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1 ORDERS that Gilliam pay GD a total fee and cost award of
2 \$34,553.94 upon receipt of this order.

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4 IT IS SO ORDERED.

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7 VAUGHN R WALKER
United States District Judge
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